

AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. Application No. 10/074,000

REMARKS

Reconsideration and allowance of the subject application are respectfully requested. By this Amendment, Applicant has added new claims 23-32. Thus, claims 1-32 are now pending in the application. Applicant respectfully submits that the pending claims define patentable subject matter.

Claims 1-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent Publication No. 2002/0119784 (copending U.S. Application No. 10/073,950; Alcatel Ref: 104014). Claims 1-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent Publication No. 2004/0053597 (copending U.S. Application No. 10/250,990; Alcatel Ref: 103755).¹ Claims 1-16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/466,058 (Alcatel Ref: 103710). The double patenting rejections are provisional because the claims of the other applications have not yet issued in a patent.

In support of the double patenting rejections, the Examiner asserts that “[a]lthough the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of the claims of the instant application are broad enough and are encompassed by the

¹ An obviousness-type double patenting rejection may only be made non-provisional in the case where the conflicting claims are claims of an issued patent. Thus, the obviousness-type double patenting rejections based on U.S. Patent Publication No. 2002/0119784 (corresponding to U.S. Application No. 10/073,950) and U.S. Patent Publication No. 2004/0053597 (corresponding to U.S. Application No. 10/250,990) are provisional. See MPEP 804 (I)(C).

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limitations of the claims of the patent publication and as such it would have been obvious to one of ordinary skill in the art to implement the invention of the instant application using the claims of the patent publication for managing processing resources in a mobile radio system.”

Along with this Amendment, Applicant is submitting a terminal disclaimer with regard to U.S. Application No. 10/073,950. Accordingly, the Examiner is requested to remove the provisional double patent rejection based on U.S. Patent Publication No. 2002/0119784 (copending U.S. Application No. 10/073,950).

With regard to the provisional double patenting rejections based on U.S. Patent Publication No. 2004/0053597 (copending U.S. Application No. 10/250,990) and U.S. Application No. 10/466,058, Applicant notes that neither of the copending applications has been allowed (U.S. Application No. 10/466,058 has not even been examined on the merits). Moreover, Applicant submits that the claims of the present application would not have been rendered obvious in view of the currently pending claims in U.S. Application Nos. 10/250,990 and 10/466,058.² In particular, the currently pending claims in U.S. Application Nos. 10/250,990 and 10/466,058 do not disclose or suggest updating a capacity credit on the basis of a consumption law, wherein in the case of variable spreading factor and/or variable number of spreading codes, the updating is effected on the basis of a reference spreading factor and/or a reference number of spreading codes, as required by the independent claims of the present application.

² The claims in U.S. Application No. 10/250,990 were amended in the Amendment filed July 20, 2005.

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Accordingly, the Examiner is requested to withdraw the provision double patenting rejections based on U.S. Patent Publication No. 2004/0053597 (copending U.S. Application No. 10/250,990) and U.S. Application No. 10/466,058, and allow the present application.³

By this Amendment, Applicant has added new claims 24-32. Applicant respectfully submits that claims 24-32 should be allowable over U.S. Patent Publication No. 2004/0053597 (copending U.S. Application No. 10/250,990) and U.S. Application No. 10/466,058 for the same reasons discussed above with regard to claims 1-23.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

³ According to MPEP 804(I)(B), if a provisional double patenting rejection in one application is the only rejection remaining, then the Examiner should withdraw the provisional rejection and permit that application to issue as a patent, thereby converting the *provisional* double patenting rejection in the other application into a *bona fide* double patenting rejection at the time the one application issues as a patent.

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The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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WASHINGTON OFFICE
23373
CUSTOMER NUMBER

Date: September 7, 2005

Attorney Docket No.: Q68412